In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 658

HELENE S. COHN

v.

MORRIS B. COHN, DORA A. COHN AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between the petitioner, Helene S. Cohn, the widow of a naval officer, and respondents Morris B. Cohn and Dora A. Cohn, his parents, as to the disposition of the proceeds payable by the Government under a $10,000 policy of life insurance issued to the deceased under the National Service Life Insurance Act.

Petitioner filed an informal claim to the proceeds of the policy with the Veterans' Administration on January 9, 1945, and on February 13, 1946, petitioner's attorney was advised by the

Veterans' Administration that petitioner would be allowed thirty days to take any action deemed necessary to protect her rights in the insurance proceeds and that settlement was contemplated at the expiration of the said thirty days in favor of the parents, respondents here. On March 11, 1946, suit for the proceeds of the insurance was brought by petitioner, the widow of the insured, against the respondents here, the insured's parents, and the United States, in the United States District Court for the District of Columbia. The claim was based on the allegation that the widow was the designated beneficiary when the insured died. In its answer to the complaint the United States admitted that by virtue of a grace period, allowed for the payment of premium, the insurance was in full force and effect at the time of insured's death, and therefore stated that it stood ready and willing to pay the proceeds of the insurance, as provided by law and regulations, to the person or persons the court found entitled thereto. The United States prayed that the court allow a set-off of $6.50 for a premium which became due before insured's death and remained owing, and also prayed that the court discharge the United States from liability except as to the person or persons the court adjudged entitled to the insurance proceeds.

The district court found that the insured changed the designation of beneficiary under the policy from his parents, respondents here, to his

wife, petitioner here, and therefore decreed that the United States pay petitioner the benefits of the policy. The United States Court of Appeals for the District of Columbia stated that the reasonable and necessary proof was a writing, which, if not currently existing should be proved by the well-established rules for making such proof, and held that the whole of the testimony did not remotely approach the evidence necessary to establish by parol the contents of a lost or missing document; therefore, the judgment of the district court was reversed and the case remanded with directions to enter judgment for respondents here.

Because the Government has no interest in this controversy other than to pay the proceeds of the insurance, admittedly due, to the proper beneficiary, the Government in effect occupies the role of a stakeholder and therefore takes no position as to whether the writ of certiorari should issue.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

APRIL 1949.

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